

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS GARRISON CORSO,

Defendant-Appellant.

UNPUBLISHED

May 20, 2010

No. 290666

Grand Traverse Circuit Court

LC No. 08-010685-FH

Before: WHITBECK, P.J., and SAWYER and BORRELLO, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions of malicious destruction of police property, MCL 750.377b, and resisting and obstructing a police officer, MCL 750.81d(1), entered after a jury trial. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The charges in the instant case arose out of an incident that occurred when Deputy Aaron Dankers of the Grand Traverse County Sheriff's Department went to defendant's home to arrest defendant on a warrant issued by the Friend of the Court. Dankers wore his full uniform and drove his fully marked patrol vehicle to defendant's residence. Dankers maintained that he acted in a professional manner but that defendant behaved belligerently and engaged in action, including kicking out the window of the patrol car, that necessitated the use of pepper spray. Defendant and his girlfriend asserted that Dankers acted aggressively and used profanity; defendant acknowledged that he kicked out the window of the patrol car, but contended that he did so only after Dankers shut the door on his other foot.

The evidence showed that Dankers had had previous contact with defendant regarding a personal protection order (PPO), and that Dankers had arrested defendant for violating the PPO. Defendant acknowledged that Dankers had arrested him on a prior occasion on a charge that he had violated a PPO. However, defendant denied that he held a grudge against Dankers.

During closing argument, the prosecutor noted the evidence that defendant had been found guilty of violating a PPO, and acknowledged that such an event could have emotional repercussions. At one point, the prosecutor stated:

Also we learn that [defendant] may have a reason to dislike this officer, because this officer, okay, had to testify at a prior hearing, contested hearing.

This is a contested hearing, we call it a trial but it's a contested hearing. At a contested hearing, this officer had to testify, okay, as – as the same as the Defendant's ex-wife, okay, had to testify, okay, in a contested hearing, where he was found in violation of a personal protection order. A personal protection order is a what? It is a court order. So prior to October 10th of 2008 he had disregarded a Court order already.

It's not as if refusing to obey Court orders is something new to him. He did it previous. And he did it again.

The prosecutor then stated:

So I submit to you that an individual who's willing to violate one Court order, you should look and see whether or not he probably would be willing to violate another Court order.

Defendant did not object to these remarks.

The trial court sentenced defendant to three years' probation, with three months in jail and ten days' credit.

On appeal, defendant argues that the prosecutor's repeated references to the fact that defendant disobeyed a PPO deprived defendant of a fair trial by portraying him as a bad person who had no compunction about disobeying court orders. We disagree.

The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001). Prosecutorial misconduct issues are decided on a case-by-case basis. We must examine the pertinent portion of the record, and evaluate a prosecutor's remarks in context. *People v Noble*, 238 Mich App 647, 660; 608 NW2d 123 (1999). Prosecutorial comments must be read as a whole and evaluated in light of defense arguments and the relationship they bear to the evidence admitted at trial. *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000), rev'd in part on other grounds *Crawford v Washington*, 541 US 36; 124 S Ct 1354; 158 L Ed 2d 177 (2004). We review a claim of prosecutorial misconduct de novo. *People v Pfaffle*, 246 Mich App 282, 288; 632 NW2d 162 (2001). No error requiring reversal will be found if the prejudicial effect of the prosecutor's remarks could have been cured by a timely instruction. *People v Leshaj*, 249 Mich App 417, 419; 641 NW2d 872 (2002).

We hold that the prosecutor's remarks did not deny defendant a fair trial. Defendant failed to object to the remarks about which he now complains; thus, our review is for plain error. Reversal is warranted only when a plain error resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of judicial proceedings. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Defendant concedes that the evidence regarding his prior violation of the PPO was admissible for the limited purpose of allowing the jury to determine whether defendant felt personal animosity toward Dankers that might have affected defendant's behavior. The trial court instructed the jury that if it believed that defendant violated the PPO, it was not to consider that evidence for any purpose other than determining whether defendant might have felt animosity that affected his

behavior with Dankers. The trial court specifically instructed the jury that it could not decide that the evidence showed that defendant was a bad person or that he was likely to commit crimes. The trial court also instructed the jury that arguments of counsel were not evidence.

The prosecutor's assertion that the jury should consider the evidence regarding defendant's violation of the PPO when determining whether defendant might be willing to violate another court order was arguably improper. However, the trial court subsequently instructed the jury on the proper use of this evidence. Moreover, any prejudicial effect created by the prosecutor's remarks could have been cured by a timely instruction. *Leshaj*, 249 Mich App at 419. Defendant has not shown the existence of plain error under the circumstances. *Carines*, 460 Mich at 763-764.

Affirmed.

/s/ William C. Whitbeck

/s/ David H. Sawyer

/s/ Stephen L. Borrello